

Claimant was treated briefly by Dr. Don Mead and then the injury was evaluated by Dr. Smith on behalf of claimant, Dr. Michael J. Poppa on behalf of respondent, and Dr. Vita J. Carabetta as the independent medical examiner at the request of the ALJ. Dr. Smith rated the impairment as 5 percent of the whole body, and Dr. Poppa concluded there was no permanent impairment. Both indicated they based the ratings on criteria from the AMA Guides. Dr. Carabetta concluded there was 3 to 4 percent but stated there would be 0 percent if the rating were based solely on the AMA Guides as required in K.S.A. 44-510e. The primary difference in the findings of the physicians was with regard to range of motion. Dr. Smith found loss of range of motion, and Dr. Poppa did not. Dr. Carabetta found a normal range but noted pain at the extremes.

The ALJ considered these three opinions and found claimant has a 3 percent disability. The Board agrees. Respondent suggests that the range of motion, even if limited at the time claimant saw Dr. Smith, had fully recovered and become full by the time claimant saw Dr. Poppa. But Dr. Smith did not see claimant until March 10, 1997, approximately six months after the injury. Dr. Poppa believed claimant had reached maximum medical improvement as early as October 14, 1996, months before she saw Dr. Smith. The Board concludes the difference in the findings is likely a difference in the way the physicians view the testing rather than further recovery by claimant. The 3 percent award is, therefore, a reasonable compromise of the various opinions. The Board agrees with and adopts that finding.

The Board also agrees with the decision to extend time to allow for the deposition of Dr. Smith. It appears, as the ALJ found, there was good cause for doing so.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Robert H. Foerschler on March 25, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Edmund T. Shine, Kansas City, MO
Jeff K. Cooper, Topeka, KS
Robert H. Foerschler, Administrative Law Judge

EDNA MITCHELL

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DOCKET NO. 217,174

Philip S. Harness, Director